

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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DONNA FUSCHETTO,	:	
	:	REPORT AND
Plaintiff,	:	RECOMMENDATION
	:	
-against-	:	07 Civ. 11630 (SCR)(LMS)
	:	
THE VILLAGE OF DOBBS FERRY, et al.,	:	
	:	
Defendant.	:	

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TO: The Honorable Stephen C. Robinson, United States District Judge:

On December 28, 2007, this plaintiff filed her Complaint. The case was assigned to the Honorable Lewis A. Kaplan, United States District Judge, and referred to the Honorable Douglas F. Eaton, United States Magistrate Judge. On March 13, 2008, it was reassigned to Your Honor, and by Order of Reference dated March 26, 2008, the matter was referred to me for general pretrial supervision.

The Complaint in this matter alleges a violation of 42 U.S.C. §1983 based on the claim that defendants, including the Village of Dobbs Ferry, the Dobbs Ferry Zoning Board of Appeals, and various employees of the Village of Dobbs Ferry, violated plaintiff's constitutional rights in connection with her efforts to use a commercial property in Dobbs Ferry. Plaintiff alleged that she suffered monetary damages of at least \$500,000, and that she was entitled to punitive damages of \$5 million.

On April 30, 2008, a Deputy Clerk for the undersigned sent plaintiff a Rule 4(m) notice, copy attached hereto as Exhibit A. On May 8 the letter was received back by my chambers,

stamped "Returned to Sender, Not Deliverable as Addressed, Unable to Forward, Box Closed - No Order." The envelope bore a yellow computer generated ticket which reads, in part, "05/06/08 Return to Sender, Not Deliverable<sup>4</sup> as Addressed, Unable to Forward." A copy is attached as Exhibit B.

There is nothing in the Docket Sheet or the Court file which contains any change of address for plaintiff. There is no evidence that plaintiff has made any efforts to effect service in this case.

Under these circumstances, where service of the summons and complaint has not been made on any defendant within 120 days of the filing of the Complaint, and where plaintiff has not notified the Court of her change of address, I respectfully recommend that Your Honor should dismiss this action without prejudice. See FED. R. CIV. P. 4(m). In the event that plaintiff provides Your Honor with a submission establishing good cause for her failure to have effected service in a timely fashion, then I respectfully recommend that she be granted no more than 30 days to effect service.

### **NOTICE**

Pursuant to 28 U.S.C. § 636(b)(1), as amended, and Fed. R. Civ. P. 72(b), plaintiff shall have ten (10) days, plus an additional three (3) days, pursuant to Fed. R. Civ. P. 6(e), or a total of thirteen (13) working days (see Fed. R. Civ. P. 6(a)), from the date hereof, to file written objections to this Report and Recommendation. Such objections, if any, shall be filed with the Clerk of Court, with extra copies delivered to the chambers of The Honorable Stephen C. Robinson, at the United States District Court, Southern District of New York, United States

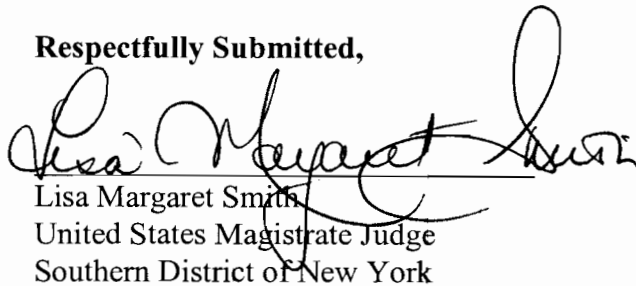
Courthouse, 300 Quarropas Street, White Plains, New York 10601, and the chambers of the undersigned at the said Courthouse.

Failure to file timely objections to this Report and Recommendation will preclude later appellate review of any order of judgment that will be entered.

Requests for extensions of time to file objections must be made to Judge Robinson.

Dated: May 9, 2008  
White Plains, New York

**Respectfully Submitted,**



Lisa Margaret Smith  
United States Magistrate Judge  
Southern District of New York

A copy of this Report and Recommendation has been mailed to Donna Fuschetto, P.O. Box 1671, New York, NY 10150

# **EXHIBIT A**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
300 QUARROPAS STREET  
WHITE PLAINS, NEW YORK 10601

Chambers of  
**Hon. Lisa Margaret Smith**  
United States Magistrate Judge

April 30, 2008

**NOTICE**

Donna Fuschetto  
PO Box 1671  
New York, NY 10150

The record of the court does not indicate service of the summons and complaint in the matter of **FUSCHETTO-V-DOBBS FERRY** 07CV11630(SCR)(LMS) which was filed on December 28, 2007.

Rule 4(m) of the Federal Rules of Civil Procedure provides (in part):

*....If service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court, upon motion or its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to the defendant or direct that service be effected within a specified time: provided that if the plaintiff shows good cause for the failure, the court shall extend the time for service for an appropriate period...*

**Failure to respond to this notice within 30 days may result in the dismissal of this action.**

Please direct any inquiry regarding this procedure to the Pro-Se Office of the Court

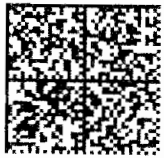
James Galvin  
Deputy Clerk  
United States District Court

## **EXHIBIT B**

UNITED STATES DISTRICT COURT  
CHAMBERS OF  
LISA MARGARET SMITH  
UNITED STATES MAGISTRATE JUDGE  
UNITED STATES COURTHOUSE  
300 QUARROPAS STREET  
WHITE PLAINS, NEW YORK 10601  
OFFICIAL BUSINESS

NOT DELIVERABLE  
AS ADDRESSED  
UNABLE TO FORWARD  
Box Closed - No Order Donna Fuschetto

PO Box 1671  
New York, NY 10150



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